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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/523,752

02/08/2005

Klemens Kieninger

502901-330PUS

2727

27799

7590

11/14/2008

COHEN, PONTANI, LIEBERMAN & PAVANE LLP

551 FIFTH AVENUE

SUITE 1210

NEW YORK, NY 10176

EXAMINER

FREAY, CHARLES GRANT

ART UNIT

PAPER NUMBER

3746

MAIL DATE

DELIVERY MODE

11/14/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/523,752

Applicant(s)

KIENINGER ET AL.

Examiner

Charles G. Freay

Art Unit

3746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This office action is in response to the amendment of July 18, 2008. In making the below rejections the examiner has considered and addressed each of the applicant's arguments.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are vague and indefinite because in line 3 of claim 1 it is unclear which element "thereon" refers to. The claim is also vague and indefinite because it is unclear what the pot being "assigned to a baffle" claims. It is unclear if the baffle is actually being claimed and furthermore it is unclear what the structural relationship between the baffle and the pot would be.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat.

App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 5 recites the broad recitation of between 5 to 85 degrees, and the claim also recites between 20 and 70 degrees which is the narrower statement of the range/limitation.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3, 6 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Eck.

As set forth in the previous office action Eck discloses a suction jet pump including a propulsion jet nozzle 14 having a round nozzle orifice and a mixing tube (extending from 6). Further there is an intake orifice 15 with a suction line (extending to valve 16). The suction jet pump is located in a pot 2 assigned to a baffle 8. The pump is located horizontally which is an angle deviating from perpendicular.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eck in view of Iwamoto et al (USPAP 2002/0112700).

As set forth above Eck discloses the invention substantially as claimed but does not disclose the jet pump being arranged perpendicular to the pot or at an angle between horizontal and perpendicular. Eck also does not disclose the pot being integrally formed with the jet pump. In Fig. 9 Iwamoto et al discloses a fuel pump arrangement substantially as claimed including a jet pump as claimed 510 which is perpendicular to the bottom of the pot. At the time of the invention it would have been obvious to one of ordinary skill in the art to arrange the pump perpendicularly as taught by Iwamoto et al in dependence upon the space considerations of the tank. Furthermore, it would have been obvious to one of ordinary skill in the art to determine an appropriate angle for the jet pump between that disclosed by Eck and Iwamoto et al since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eck.

As set forth above Eck discloses the invention substantially as claimed but no specific disclosure is made with regards to the pot being integrally formed on the suction jet pump. It would be obvious to one having ordinary skill in the art at the time of the invention to have integrally formed the element, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Works*, 150 U.S. 164 (1993).

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eck as applied to claim 6 above and further in view of Becker et al.

As set forth above Eck discloses the invention substantially as claimed but does not teach of a latch or plug connection as a means for connecting the pot and the suction jet pump. Becker et al disclose an ejector pump as described provided in a fuel tank with a latch 20. At the time of the invention it would have been obvious to one of ordinary skill in the art to use such a connection in order to allow for the easy connection and disconnection of the pump to the pot.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eck in view of Ramamurthy et al as set forth in the previous office action.

Response to Arguments

Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles G. Freay whose telephone number is 571-272-4827. The examiner can normally be reached on Monday through Friday 8:30 A.M. to 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Devon Kramer can be reached on 571-272-7118. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles G Freay/
Primary Examiner
Art Unit 3746

CGF
November 8, 2008